

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHERRY MOSES)	
Claimant)	
VS.)	
)	Docket No. 168,143
SUNSHINE BISCUITS, INC.)	
Respondent)	
AND)	
)	
CRUM & FORSTER COMMERCIAL INSURANCE)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from a preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler on October 21, 1996.

ISSUES

Claimant's Application for Review states the following two issues:

- (1) Did the Administrative Law Judge exceed his jurisdiction in denying temporary total disability for the period August 17, 1995 through July 15, 1996, and granting only temporary total disability from March 29, 1996 to July 15, 1996?

- (2) Should this application for medical treatment and application for review and modification relate back to filing of a separate claim for workers compensation on July 31, 1995, becoming docket number 204,228?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds that the issues raised by the claimant in this appeal do not constitute allegations that the Administrative Law Judge has exceeded his jurisdiction, as contemplated in K.S.A. 44-551 and K.S.A. 44-534a. Highly summarized, claimant's first argument is that respondent improperly delayed referral to an authorized physician and this delay, coupled with the Administrative Law Judge's insistence on an opinion from an authorized physician, improperly reward the respondent.

The second issue concerns the time limits on change of benefits by review and modification. Specifically, K.S.A. 44-528 provides that a modification is not to be effective more than 6 months prior to the date the application for review and modification was filed. In this case, claimant initially filed a new and separate claim. When medical opinions indicated the problems stem from this previously-litigated claim, Docket No.168,143, claimant then sought review and modification. Claimant argues that the application for review and modification should date back to the date of the application of a separately-docketed claim in Docket No. 204,228.

Neither of the above issues states a basis for determining this Administrative Law Judge exceeded his jurisdiction. Claimant argues the issues raised here involve one of the "other defenses" which the legislature intended be reviewed under K.S.A. 44-534a. The Appeals Board, however, construes the "other defenses" language in light of the language in K.S.A. 44-551 which limits appeals to ones which allege the Administrative Law Judge exceeded his/her jurisdiction. As a consequence, the Appeals Board reviews only findings on "other defenses" when the "other defenses" relate to the jurisdiction of the Administrative Law Judge. The issues raised here, do not, in the Appeals Board's opinion, go to the question of jurisdiction. They are not subject to review at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's Application for Review of the preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler dated October 21, 1996, should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February, 1997.

BOARD MEMBER

c: David R. Hills, Lenexa, KS
Gary R. Terrill, Overland Park, KS
J. Paul Maurin III, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director